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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 10th July, 2023

No. 13/1/9988-HII(2)-2023/9641.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 54/2018 dated 28.04.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

MANJU DEVI, H.NO.2132/6, PIPLIWALA TOWN, MANIMAJRA, CHANDIGARH (Workman)

AND

- (1) M/S PREMIER SHIELD PVT. LTD., SCO NO.198, SECTOR 7-C, CHANDIGARH
- (2) M/S INOSYS LIMITED, PLOT NO.1, I.T. PARK, CHANDIGARH (Management)

AWARD

1. Manju Devi, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman was appointed as Lady Security Guard on 01.04.2013 by the management No.1 and was deployed at the work place of management No. 2. The workman remained in the uninterrupted employment up to 13.08.2017 when her services were illegally and wrongfully terminated by refusing of work. The workman was drawing ₹11,200/- per month as wages at the time of termination. On 13.08.2017 the workman went to attend her normal duty but she was refused wok by the management without assigning any reason and notice. On 20.07.2017 while in service the workman received letter No. Nil dated 14.07.2017 vide which management No.1 asked the workman to resign the services. The workman vide her letter dated 09.08.2017 which was duly received by the management, asked the reason of resignation but the management did not reply the letter. The workers juniors to workman were retained in service when the services of the workman were terminated which is a violation of Section 25-G of the ID Act. The management has also violated Section 25-F of the ID Act. No charge sheet was issued, no inquiry was held and the workman was not paid any retrenchment compensation at the

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time of termination. Violation of the same makes the termination void. The refusal of work, which also amounts to termination, is retrenchment under Section 2(oo) of the ID Act. The workman then served upon the management a demand notice dated 06.09.2017. The management did not reply the demand notice. The Conciliation Officer, U.T. Chandigarh was requested for his intervention into the matter. The Conciliation Officer fixed a number of dates for an amicable settlement by the management refused to take the workman back on duty. The action of the management in terminating the services of the workman is illegal, wrongful, motivated, against the principles of natural justice and unfair labour practice. On 07.04.2018 the workman received letter dated 05.04.2018 which was information for full & final settlement. A cheque of ₹ 9,845/- was enclosed with the letter under reference. The cheque was received under protest and without prejudice to the right of the workman for reinstatement as her services was illegally and wrongfully terminated. The workman also requested the management No.1 to send her the details of amount of ₹ 9,845/- but the management had not supplied the details of ₹ 9,845/- till date. Prayer is made that the workman may be reinstated with continuity of service and full back wages as the workman remained unemployed during the period i.e. from the date of termination till date.

3. On notice, management No.1 filed amended written reply on 02.03.2021 wherein preliminary objections are raised on the ground that the management No.1 is a service provider and registered under the Contract Labour Abolition Act, is having a valid licence to provide the contract labour at various institutions. The Infosys is also one of such institution where the management No.1 used to provide its services. The workman has concealed the material facts from this Hon'ble Court. Thus, the claim requires to be rejected at this score alone. The workman herself had left the job on 13.08.2017. Since then the workman never turned up and had started litigation with the managements. The workman was offered to join another company except Infosys as Infosys has sent a mail to management No.1 with regard to vacation of the building and non-deployment of Lady Security Guard (L. SG) at DLF Building after 31.07.2017. The management No.1 had issued one month notice to the workman and asked her to join another company except Infosys but the workman was adamant and not willing to join another company. Now the contract with the Infosys is over. It is not possible to depute the workman at the work place of her choice. She herself has left the job, therefore, she is not entitled to any relief as claimed for. The dues of the workman were cleared. Therefore, there is nothing due towards her. The claim statement is liable to be rejected.

4. Further on merits, it is stated that the workman had left the job at her own and had not turned up after 13.08.2017. The notice was sent on 09.04.2017. However, despite receiving the notice, the workman never turned up. No such letter dated 09.08.2017 was received by the management and no such letter dated 14.07.2017 was ever issued to the workman. No junior was retained. No fresh appointment was given. There is no violation of Section 25-F, 25-G & 25-H of the ID Act as alleged. The workman was offered service in another institution except the Infosys but she flatly refused the work. Even before the Conciliation Officer the workman refused that the demand notice was duly replied. However, because of adamant behaviour of the workman no settlement reached between the parties. It is admitted to the extent that the cheque amount of ₹ 9,845/- was sent to the workman as full & final settlement, which she accepted voluntarily and there is nothing due towards the management of management No.1. Further similar stand is taken as taken in the preliminary objections. Rest of the averments of claim statement are denied being wrong and false and prayer is made that claim of the workman may be rejected.

5. Management No.2 contested the claim statement by filing separate written statement on 12.09.2018 wherein preliminary submissions are made to the effect that M/s Infosys Limited / management No. 2 is a company incorporated under the Companies Act, 1956 and is engaged in providing global consulting and IT related services. The Board of Directors in their meeting held on 04.12.2014 resolved that Shri Suresh Shenoy shall inter alia be authorised to appear and sign proceedings on behalf of the company. Infosys is a NYSE listed global consulting and IT services company with more than 1,98,000 employees.

NR Narayana Murti has written in his debut book 'A better India, a better World'. In this book he has written about the Infosys's vision and how they will achieve it. In the claim statement, the claimant has time again reflected that both the managements / opposite party are having some kind of association with each other and that the working of the first management is dependent on the working of the second management. It is denied at the outset that M/s Infosys Limited is having any control over the management and affairs of management No.1. M/s Infosys is a company engaged in providing global consulting and IT services to its customer throughout the length and breadth of this country. The management No.2 is happens to be security service provider. The management No.1 was free to employ its own personnel, to train them and to depute them upon the premises of M/s Infosys Limited, in whatsoever manner it deemed fit and appropriate, so as to provide the above said services in the premises of M/s Infosys Limited. M/s Infosys Limited has executed an agreement to this effect with the management No.1 which laid down the relationship between both the parties. M/s Infosys Limited does not bear any further association with the management No.1. In fact, management No.1 is a separate legal entity being a company registered under the Companies Act, 1956 and is having a separate Board of Directors and does not have any shared ventures with the management No. 2. Management No.2 does not have any control over the personnel employed by the management No. 2. Neither does the answering management directly pay wages to the said employees nor it exercise a direct command over them. The relationship between management No.1 and 2 begins from the date of execution of the agreement dated 14.06.2016 and it comes to an end upon the termination or expiry of the said agreement as well.

6. Further preliminary objections are raised on the ground that all the contentions taken by the workman may be deemed to be denied until specifically admitted by the answering management. The workman has not approached this Court with clean hands and suppressed material facts from this Court. The workman has concocted a frivolous story to suit her own convenience and has raised unfounded and untenable arguments. It is settled law that one who seeks equity must do equity. The workman by not only suppressing the material facts, but by also presenting the facts wrongfully has played a trick upon the Court. Her claim statement requires to be dismissed on this short ground alone. The claim statement is miserably barred by limitation. The same requires to be dismissed on this short ground alone. The claim statement under reply is not liable to be entertained in the present form.

7. Further on merits, it is denied for want of knowledge that the workman was appointed as Lady Security Guards on 01.04.2013 by the management No.1 and was deployed at the work place of management No. 2 at its given address. It is denied for want of knowledge that the workman remained in uninterrupted employment up to 13.08.2017 when her services were illegally and wrongfully terminated by refusing work. It is denied for want of knowledge that the workman was drawing ₹11,200/- wages per month at the time of termination. The answering management was neither involved in the appointment of the workman nor the alleged termination of the workman. Since the answering management did not employ the workman itself, therefore, the question of disbursing salary to her directly does not arise either. There is no employer-employee relationship between the management No.2 and the workman. Hence, the question of refusing her work by the management No.2 does not arise at all. However, in case the management No.1 has refused to allow the workman to perform her duties, the management No. 2 cannot comment upon the same. No letter was ever issued by the management No. 2 upon the workman as alleged. The management No.1 cannot comment upon the same if such letter was served upon the workman by the management No.1, which is a separate legal entity capable of suing and being sued. The management No.2 has wrongly been impleaded and is not at all a relevant party in the present litigation. Thus, the proceedings qua the answering management No.2 ought to be dropped at the earliest. The management No.2 was neither involved in appointing the workman nor in disbursing salaries to her, nor is the alleged termination of her services. The answering management has wrongly been impleaded and is not at all a relevant party. The management No. 2 was neither involved in appointing the workman nor in disbursing salary to her nor in the alleged termination of his services. Thus, the management No. 2 has wrongly been impleaded and is not at all a relevant party in the present litigation. Thus,

the proceedings qua the management No.2 ought to be dropped at the outset. Rest of the averments of claim statement are denied as wrong and prayer is made that the petition qua the answering management No. 2 may be dismissed with cost throughout.

8. The workman filed replication wherein the contents of the respective written statements are denied except admitted facts of the written statements and averments of claim statement are reiterated.

9. From the pleadings of the parties, following issues were framed vide order dated 27.07.2021:—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief she is entitled to, if any ? OPW

2. Relief.

10. In evidence, the workman Manju Devi examined herself AW1 and tendered her affidavit Exhibit 'AW1/A' along with documents Exhibit 'W1' to 'W3'.

Exhibit 'W1' is the copy of letter / one month notice dated 14.07.2017 issued by M/s Premier Shield Pvt. Ltd. / management No.1 to the workman.

Exhibit 'W2' is copy of reply dated 09.08./2017 to letter dated 14.07.2017 issued by Manju Devi to M/s Premier Shield Pvt. Ltd. / management No.1.

Exhibit 'W3' is letter dated 19.04.2018 issued by the workman to M/s Premier Shield Pvt. Ltd. seeking information regarding full & final settlement.

On 19.12.2021, the workman closed her evidence.

11. On the other hand, management No.1 examined MW1 Jaswant Singh - Training Officer, M/s Premier Shield Pvt. Ltd., who tendered his affidavit Exhibit "MW1/A" along with documents Exhibit 'MW1/1' to Exhibit 'MW1/6'.

Exhibit 'MW1/1' is copy of authority letter issued by Director, M/s Premier Shield Pvt. Ltd. in favour of Mr. Jaswant Singh - Field Training Officer.

Exhibit 'MW1/2' is copy of licence No.CL/UT/CHD 326 dated 07.09.2007 whereby the licence of M/s Premier Shield Pvt. Ltd. have been renewed upto 31.12.2015, bearing Endorsement dated 17.11.2015 whereby the licence is renewed from 01.01.2016 to 31.12.2016 and endorsement dated 31.12.2016 whereby the licence is renewed from 01.01.2017 to 31.12.2017.

Exhibit 'MW1/3' is print out of email dated 12.07.2017 from management No. 2 to management No.1 on the subject of vacating DLF premises and printout of email dated 19.07.2017 from management No.1 to management No.2 relating to the subject of issuance of one month notice letter to L/SG Renu and L/SG Manju Devi.

Exhibit 'MW1/4' is copy of letter dated 14.07.2017 issued from management No. 1 to the workman relating to the subject of notice period letter.

Exhibit 'MW1/5' is the photocopy of postal receipt dated 19.07.2017 vide which the notice dated 14.07.2017 was issued through registered post to the workman.

Exhibit 'MW1/6' is photocopy of A/c payee cheque No.011723 dated 24.01.2018 for sum of ₹ 9,845/- drawn on HDFC Bank in favour of Manju Devi issued by Premier Shield Pvt. Ltd.

On 29.07.2022 Learned Representative for management No.1 closed evidence.

12. Management No.2 examined MW2 Puneet Randhwa - Senior Regional Head, Infosys Limited, who tendered his affidavit Exhibit 'MW2/A' along with documents Exhibit 'M1' and Exhibit 'M2'.

Exhibit 'M1' is attested copy of Board Resolution dated 21.04.2022.

Exhibit 'M2' is copy of agreement dated 15.06.2016 between Infosys Limited and Premier Shield Pvt. Ltd.

13. On 28.04.2023 Learned Representative for management No.2 closed evidence.

14. I have heard arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise finding are as below :—

Issue No. 1 :

15. Onus to prove this issue is on the workman.

16. Under this issue Learned Representative for the workman referred the testimony of AW1 Manju Devi, who vide her affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity and supported her oral version with documents Exhibit 'W1' to Exhibit 'W3'.

17. On the other hand, Learned Representative for management No.1 referred the testimony of MW1 Jaswant Singh - Field Training Officer of M/s Premier Shield Pvt. Limited, who vide his affidavit Exhibit 'MW1/A' deposed all the material contents of the written statement of management No. 2 and supported his oral version with documents Exhibit 'MW1/1' to Exhibit 'MW1/6'.

18. Learned Representative for management No.2 referred to the testimony of MW2 Puneet Randhwa, Senior Regional Head - Facilities, Infosys Limited, who vide his affidavit Exhibit 'MW2/A' deposed the entire contents of the written statement of management No. 2 and supported his oral version with documents Exhibit 'M1' and Exhibit 'M2'.

19. From the oral as well documentary evidence led by the parties, it comes out that undisputedly management No.1 is the service provider / contractor, who provided services of supplying manpower to various institutions including management No.2. Further, there is no dispute between the parties with regard to the fact that on 01.04.2013 management No.1 / M/s Premier Shield Pvt. Ltd. appointed Manju Devi as Lady Security Guard and deployed at the work place of management No.2 / M/s Infosys Limited at plot No.1, IT Park Chandigarh. There is no dispute between the parties with regard to the fact that Manju Devi remained in the interrupted employment up to 13.08.2017 and her last drawn salary was ₹11,200/- per month.

20. It is admitted fact of the management No.1 that no appointment letter and termination was issued by management No.1 to Manju Devi. In this regard, AW1 Manju Devi when put to cross-examination by management No.1 admitted as correct that no appointment letter was issued by the management No.1 with regard to her services with management No.2. AW1 further admitted as correct that no termination letter was issued to her by the management No. 1.

21. Management No.1 entered into contract with management No.2 on 14.06.2016 vide Exhibit 'M2'. MW2 Puneet Randhawa (witness of management No. 2) when put to cross-examination by the workman admitted as correct that the contract with management No. 1 was terminated because the office situated at IT Park was closed. MW2 in his cross-examination further admitted the suggestion as correct that the security contract has been to another security agency by their company.

22. The dispute is confined to the termination of services of the workman. The workman has alleged that on 13.08.2017 she went to attend her normal duty but she was refused work by the management without assigning any reason and notice. The management No.1 has pleaded that the workman had herself left the job / service of management No.1 on 13.08.2017 and since then she had never turned up and had started litigation with the management. Management No.2 has pleaded that the workman was neither permanent nor regular employee of Infosys Limited. Besides, there is no employer-employee relationship between management No.2 and the workman. Hence, the question of refusing her work by the management No. 2 does not arise. In case, management No.1 has refused to allow the workman to perform her duties, the management No. 2 cannot comment upon the same. As far as the plea taken by management No.2 that there is employer-employee relationship is concerned, it is important to see who was paying wages and having the control and supervision of the work assigned to the workman. In the present case, AW1 Manju Devi in her cross-examination voluntarily stated that it was Premier Shield, who used to pay salary in her account. AW1 when put to cross-examination by management No. 2 stated that she came to know from Premier Shield she should not turn up for duty. AW1 further admitted the suggestion as correct that her juniors were retained by the Premier Shield (management No.1). The expression "control and supervision?" in the context of contract labour has been explained by the Hon'ble Apex Court of India in ***International Airport Authority of India Versus International Air Cargo Workers' Union reported in (2009) 13 SCC 374*** in para38 and 39 held as below :—

"38.if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

In view of the aforesaid judgment, which is applicable to the facts of the present case to an extent, the workman is direct employee of the contractor i.e. M/s Premier Shield and the control of principal employer i.e. M/s Infosys Limited is secondary in nature as control over the workman is exercised by M/s Infosys Limited only after the workman has been assigned to the principal employer to do a particular work.

23. With regard to termination of the workman management No.1 in its written statement and MW1 in his affidavit Exhibit 'MW1/A' pleaded that the management No.2 i.e. Infosys had sent an email

dated 12.07.2017 to the management No.1 with regard to vacation of the building and non-deployment of Lady Security Guard at DLF Building after 31.07.2017. This fact is not controverted by management No. 2 during cross-examination of MW1. Moreover, MW2 in cross-examination conducted by management No.1 was put the question *'Is it correct that as per your desire the services of Manju Devi have been terminated, since your office is going to be closed from the concerned site'* MW2 answered that *'We have not asked for termination of any employee that is a prerogative of security agency'*. MW2 admitted as correct that their company was not in need of a Lady Security Guard because they were closing the office from the concerned locality. The aforesaid version of MW2 supported with email Exhibit 'MW1/3' supports the plea of the management No.1 that on 12.07.2017 Infosys informed M/s Premier Shield that the services of Lady Security Guards is no more required in their office as they are going to vacate the premises. In pursuance of the aforesaid intimation, the management No.1 / M/s Premier Shield refuse work to Manju Devi. The plea taken by management No.1 that Manju Devi was offered another job except with Infosys does not stand proved. The oral plea of management No.1 that Manju Devi was offered to join another job or company is not supported with any documentary proof. AW1 Manju Devi has denied the suggestion as wrong that she was offered service of another company by the management No.1 before ALC, Chandigarh. Even otherwise the offer of alternative employment cannot exclude the termination from the ambit of the expression 'retrenchment' envisaged in Clause (s) of Section 2 of the ID Act. AW1 also denied the suggestion as wrong that she has left the job at her own. AW1 denied the suggestion as wrong that she has not herself turned up after 13.08.2017. The facts & circumstances mentioned above would prove that when the management No. 2 informed the management No.1 that there is no requirement to depute Lady Security Guard at their premises, then the management No.1 without making any offer of job in alternate place, verbally refused work to Manju Devi on 13.08.2017. Before verbal refusal of work, no notice is proved to have been served to Manju Devi. Rather from letter Exhibit 'W1' it is proved that the Premier Shield Pvt. Ltd. through registered post directed Manju Devi to resign from the post of Lady Security Guard from Infosys Limited, IT Park, Chandigarh. In reply to the said letter Manju Devi issued letter Exhibit "W2" to M/s Premier Shield asking for the reasons that why she should resign from the post of Lady Security Guard. From Exhibit 'W3' it is proved that Manju Devi has received amount of ₹ 9,845/- from M/s Premier Shield but M/s Premier Shield did not provide the details of ₹ 9,845/- to the workman. From the contents of letter Exhibit "W3" it is proved that the Manju Devi received the amount of ₹ 9,845/- under protest by mentioning therein that it is without prejudice to her right of reinstatement. Since Manju Devi has worked 240 days in 12 calendar months preceding her termination (terminated on 13.08.2017) thus, she is entitled to the protection under Section 25-F of the ID Act. In the present case, before terminating the services of the workman the management No.1 has not complied with the requirement of Section 25-F of the ID Act. It is well settled law that where pre-requisite for valid retrenchment as laid down in Section 25-F of the ID Act has not been complied with, retrenchment bringing about termination of service is ab-initio void. The relevant provisions of Section 25-F provides as under :—

"25F. Conditions precedent to retrenchment of workmen.-No workman employed in any industry who has been in continuous service for not less than one year under an employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and*

- (c) *notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."*

The plea taken by the workman that she was removed from service without issuing any notice and without issuing any charge sheet or without holding any domestic inquiry stands proved from the testimony of MW1 Jaswant Singh (witness of M/s Premier Shield), who when put to cross-examination by the workman stated that he has sent a letter to the workman, after she absented, calling her to join her duty. The aforesaid version of MW1 does not stand proved because management No.1 has not brought into evidence any such letter issued to the workman. MW1 in his cross-examination further stated that he cannot tell the date when he sent the aforesaid letter. MW1 in his cross-examinations stated that no charge sheet was served or domestic inquiry was conducted with regard to the absence of the workman. MW1 admitted as correct that they told the workman to resign from the job as there is no work for her. The aforesaid version of MW1 speaks volume of the fact that the services of the workman have been terminated by management No.1 i.e. Premier Shield Pvt. Ltd. in violation of Section 25-F of the ID Act. Consequently, the termination of the workman is illegal. As discussed above, at present the contract between management No.1 & 2 has come to end and management No.2 i.e M/s Infosys Limited has given security contract to another security other than M/s Premier Shield. Under these circumstances, management No.1 is liable to pay lump sum compensation of ₹50,000/-. No liability of management No.2 is made out.

24. Accordingly, this issue is decided in favour of the workman and against the management No.1.

Relief:

25. In the view of foregoing finding on the issue above, this industrial dispute is partly allowed qua management No.1 to the effect that management No.1 is liable to pay the workman lump sum compensation of ₹ 50,000/- within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the said amount from the date of this award till the date of actual realisation. Claim against management No.2 is declined. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

Dated : 28.04.2023.

(JAGDEEP KAUR VIRK) ,
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 10th July, 2023

No. 13/1/9986-HII(2)-2023/9643.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 134/2018 dated 25.04.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

KOMAL W/O SH. PARVEN KUMAR R/O H.NO.345, MILK COLONY, DHANAS, U.T.
CHANDIGARH (Workman)

AND

- (1) OSCAR SECURITY & FIRE SERVICE, SCO NO.916, FIRST FLOOR, N.A.C. MANIMAJRA,
U.T. CHANDIGARH THROUGH ITS M.D. RAVI VERMA
- (2) CHANDIGARH INDUSTRIAL & TOURISM DEVELOPMENT CORPORATION LTD.,
CORPORATE OFFICE: SCO NO.121-122, SETOR 17-B, CHANDIGARH THROUGH
ITS MANAGING DIRECTOR (Management)

AWARD

1. Komal, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman was working as Helper in Mid-Day Meals (scheme floated by Government of India) in the year 2006. The workman was paid initial salary of ₹2,500/- per month. Thereafter, many contracts regarding Mid-Day Meals were given to different contractors and the employment of the said workman was continued with the different contractors. In the year 2013 the contract was taken by Oscar Security & Fire Service and thereafter the workman along with other ladies worked with the said management. The workman got pregnant. She worked with the management up to March 2017. The workman was on leave for six months from May to 29.10.2017. As per version of management No. 2, management No.1 was having its provident fund code and was registered under the Employees' Insurance Corporation and was deducting ESI and provident fund from the wages of his employees, as per the provisions of the Act. The management No.2 has failed to give the above mentioned benefits to the workman. On 01.11.2017 the workman approached the management for joining the duty but the management totally refused to join the workman and her services were illegally and wrongfully terminated by the management. At that time, the workman was drawing salary of ₹ 7,500/- per month. The salary of the workman was being deducted due to holidays and the salary was being given at the tune of ₹ 5,000/- to ₹ 6,000/- per month, which is totally illegal. The workman personally visited the management and requested them to reinstate the service and also to give her salary and other allowances. But the management totally refused to pay the same. The workman is a poor lady and having three minor daughters and one son to look after. Due to illegally termination from her services, her family suffered lot of harassment and financial crunches. The workman is running to pillar and post for getting the justice but the management is not paying any heed to the genuine request of the workman. The act of the management is clear cut violation of the principles of natural justice as laid down by Section 25-H of the ID Act. This is serious violation of Sections 25-F and 25-H of the

ID Act. Neither notice was given nor retrenchment compensation was paid to the workman even after her termination. New appointments have been made and the workman was not offered employment when new workmen were appointed. The workman filed a demand notice, which was kept pending for adjudication before Assistant Labour Commissioner, Chandigarh but the management opted adamant attitude and conciliation proceedings failed. The work is still exists and the workman is ready to join the services. Prayer is made that the workman may be reinstated into service. The management may be directed to pay dues to the workman as per the rules of the Employees' State Insurance Corporation, pay due salary and allowances along with continuity of service and all other consequential benefits.

3. On notice, management No.1 filed written statement wherein preliminary submissions are made on the ground that service contract for providing manpower was allowed for the nearly for the period of three years and it was extendable for one year by the management No.2 from 01.10.2014 and the same has been expired on 30.09.2018. Termination of workman was not made by the management No.1 as neither department intimated to the management No. 1 regarding her termination and maternity leave nor the workman ever informed the management No. 1 about her termination. The management No.1 had only prepared the wage bills as per the attendance record, which had been provided by the department. The department never provided the attendance of workman after 31.03.2017 to the management No. 1.

4. Further in parawise reply the facts that the workman was working as Helper in Mid-Day Meals (scheme floated by Government of India) in the year 2006 and that the workman was paid initial salary of ₹ 2,500/- per month and thereafter, many contracts regarding Mid-Day Meals were given to different contractors and the employment of the said workman was continued with the different contractors and further the fact that in the year 2013 the contract was taken by Oscar Security and Fire Service and thereafter workman along with other ladies worked with the management are replied being matter of record. It is admitted that the workman got pregnant and worked with the management up to March 2017. It is further admitted that the workman was on leave for six months from May to 29.10.2017. It is also admitted that management No.1 was having its provident fund code and was registered under the Employees' Insurance Corporation and was deducting ESI and provident fund from the wages of its employees, as per the provisions of the Act and that the management No. 2 has failed to give above mentioned benefits to the workman. It is further stated that the workman visited the management No.1 in the last week of November 2017. Then management No.1 had sent a letter dated 24.11.2017 to the management No.2 to reinstate her into service. But management No.2 had refused for the same. Neither management No.2 intimated regarding maternity leave of the workman nor the workman approached for the same and it only came to knowledge of management No.1 when the workman visited the office of management No.1 after availing her maternity leave in November 2017. Moreover, the management No.1 has no knowledge about her maternity leave, the department neither provided her attendance nor intimated about her maternity leave and all. The management No.1 had been left from the portal of EPF and ESI in the month of July 2017. It is denied for want of knowledge that the workman is a poor lady having three minor daughters and one son to look after. It is further stated that management No.1 never violated any provision of the ID Act. The management No.1 has no knowledge of termination of the workman or joining of any other person. The management No.1 neither terminated the workman nor liable to pay any compensation to her. It is admitted as correct that management No.1 had received the demand notice. The fact that the work is still existing and the workman is ready to join the services is denied for want of knowledge. Rest of the averments of claim statement are denied as wrong and prayer is made that the claim of the workman is false and baseless qua management No.1 and therefore, it may be disposed off as per law in the interest of justice.

5. Management No.2 contested the claim statement by filing written statement on 04.07.2019 wherein preliminary objections are raised on the ground that the present claim statement is false, frivolous, vexatious and has been made with ulterior motive to take undue advantage, harass and humiliate the answering management by abusing the process of law. The claimant-workman was never in the employment of management

No. 2. Neither any appointment letter nor any termination letter has been ever issued by the management No.2 to the workman. There was indeed no privity of contract in regard to any matter whatsoever between the management No. 2 and the workman. The workman was not a 'workman' employed by the management No. 2 within the meaning of Section 2(s) of the ID Act. There was no administrative, economic and disciplinary control of management No. 2 over the workman. Besides, the present reference is not maintainable as there is no relationship of employer & employee between the management No.2 and the workman. The management No.2 deals with hotel industry so it engages contractors for implementation of scheme launched by Government of India for labour rates, for preparation of mid day meal. Accordingly, the management No.2 floated e-tender in the year 2013-14 for this purpose. The contractor i.e. M/s Oscar Security & Fire Service Chandigarh participated and was allotted the work being the first lowest for the period of 01 year and thereafter extendable for 02 years. After allotment of work, the contractor employed the workman and deputed the management No.2 on the terms and conditions enumerated in the contract letter No. CC/2014/16444-16466 dated 13.10.2014. Hence, the workman was employed by the said contractor and not by the management No. 2. The entire payment in respect of the workman was made to the contractor and the contractor further paid the same to its employees deployed as per the terms and conditions of the agreement. Since, no appointment letter was issued to the workman by the management No.2, the question of termination of his services does not arise. The relationship of master & servant never existed between the management No. 2 and the workman. Besides, the contractor M/s Oscar Security & Fire Service is an independent organisation, the agency engaged and deployed the workman in the premises of management No. 2 as per the terms & conditions of the agreement executed between management No. 2 and management No. 1. The contractor was having his Provident Fund code and was registered under the Employees' Insurance Corporation and was deducting ESI and Provident Fund from the wages of its employees, as per the provisions of the Act. The management No. 2 had neither recruited the workman nor had any administrative, economic and disciplinary control over the workman. Therefore, the present reference deserves to be dismissed.

6. Further on merits, it is stated that the workman might have been engaged and deployed to the management No. 2 by the different contractors including the contractor i.e. management No.1 as per the terms & conditions settled between the workman and different contractors. The workman be put to strict proof to proof her claim against the management No. 2. It is admitted to the extent that in the year 2013, a contract was executed between the management No. 2 and the contractor i.e. management No.1 for deploying various employees for preparation of Mid-Day Meal as per settled terms & conditions. The contractor deploy the workers and raised bills of their wages and the entire payment qua the wage bills was made by the management No. 2 to the contractor i.e. management No.1. It is admitted to the extent that workman had filed a demand notice before the Assistant Labour Commissioner-cum-Conciliation Officer, U.T, Chandigarh and management No. 2 filed reply before the Authority. Further, similar stand is taken as taken in the preliminary objections. The facts that the workman got pregnant and was on leave for 06 months from May to 29.10.2017, the workman is a poor lady having three minor daughters and one son are denied for want of knowledge. It is also denied for want of knowledge that the management is not paying any heed to the genuine request of the workman as the workman was not in the employment of management No. 2. Rest of the averments of claim statement are denied being false, baseless and without any merits and prayer is made that the claim statement may be denied.

7. Replication not filed. From the pleadings of the parties following issues were framed vide order dated 03.10.2019 :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and what relief she is entitled to, if any? OPW
2. Whether there is no employer-employee relationship between the management No. 2 and workman? OPM-2
3. Relief

8. The workman was directed to lead evidence first. At the stage of evidence of workman, on various dates none appeared on behalf of the management No.1. Vide order dated 15.07.2021 fresh notice was ordered to be issued to management No.1. Notice issued to management No.1 for 04.10.2021 was received back un-served with the report 'office shifted'. However, on next date i.e. on 18.11.2021 Sh. Sunny Aggarwal, Representative appeared on behalf of management No.1. Again on 18.01.2023, at the stage of remaining evidence of the workman, none appeared on behalf of the management No.1 and vide order dated 18.01.2023 management No.1 was proceeded against ex-parte.

9. In evidence workman Komal examined herself as AW1 and tendered her affidavit Exhibit 'AW1/A' along with copy of reply dated 03.04.2018 filed by Oscar Security & Fire Services to the demand notice under Section 2-A of the ID Act vide Mark-A.

10. Workman examined AW2 Sukhjeet Singh, Clerk O/o Assistant Labour Commissioner (A.L.C), Sector 30, Chandigarh who brought the summoned record and tendered into evidence the documents i.e. demand notice dated 29.01.2018 raised by the workman vide Exhibit 'W1', written statement dated 02.04.2018 of CITCO to the demand notice vide Exhibit 'W2' and failure report bearing memo No.1849 dated 14.05.2018 of Assistant Labour Commissioner, U.T, Chandigarh vide Exhibit 'W3'. On 18.01.2023 workman closed her evidence.

11. On the other hand, management No.2 examined MW1 Sandeep Sethi, Manager (Commercial) Head Office, CITCO who tendered his affidavit vide Exhibit 'MW1/A' along with documents i.e. authority letter dated 15.02.2023 attested by Managing Director, CITCO vide Exhibit 'M1' and attested copy of contract dated 13.10.2014 between CITCO and M/s Oscar Security & Fire Services vide Exhibit 'M2'. On 20.04.2023 Learned Representative for management No.2 closed evidence.

12. I have heard the arguments of Learned Representative for the workman and management No.2 and perused the judicial file. My issue-wise findings are as below :—

Issue No. 2 :

13. This issue is taken up first as it goes to the root of case. Onus to prove this issue is on the management No. 2.

14. Under this issue Learned Representative for management No. 2 argued that there is no relationship of employer & employee between the management No.2 and the workman because the workman was employed with management No. 2 by different contractors including contractor M/s Oscar Security & Fire Service i.e. management No.1, as per the terms & conditions settled between the workman and different contractors. No appointment letter was ever issued to the workman by management No.2. Management No.2 has neither recruited the workman nor had any administrative, economic and disciplinary control over the workman. The contractors M/s Oscar Security & Fire Services i.e. management No.1 engaged and deployed the workman with management No. 2 as per the terms & conditions of agreement executed between management No. 2 and management No.1. Management No.1 deployed the workers including the workman and raised bills of their wages. The entire payment qua the wage bills was made by management No.2 to the contractor i.e. management No.1.

15. On the other hand, Learned Representative for the workman contended that the workman was appointed in the year 2006 as Helper in Mid-Day Meals (scheme floated by Government of India) with the managements on a monthly salary of ₹2,500/-. Thereafter, the contracts were being changed regarding Mid-day Meals and the contracts were given to the different contractors and the employment of the workman was continued as such with the management No.1. The contract between management No.1 and 2 was executed in the year 2013. Throughout her service, workman had been working under the supervision and control of management No. 2. To support his contention Learned Representative for the workman referred cross-

examination of MW1 wherein he stated that the workman was working with CITCO through the contractor. As per record, workman was Helper in Mid-day Meals. The Incharge of CITCO daily used to allocate the work to be performed by the worker. MW1 in his cross-examination further stated that Incharge Hotel Shivalikview was marking the presence of the workman. By making reference to the aforesaid version of MW1, much stress has been laid upon the fact by Learned Representative for the workman that the workman was working under the direct supervision and control of management No. 2. Thus, there exists a relationship of employer & employee between the management No.2 and the workman.

16. To my opinion, in order to ascertain the relationship of employer & employee between the management No. 2 and workman it is important to see who was paying salary to the workman and who was making standard deductions towards ESI and PF from the salary of the workman and who was competent to grant leave to the workman. In this regard, AW1 Komal (workman) in her cross-examination admitted as correct that salary was paid to her and the deductions of ESI and provident fund were made by M/s Oscar Security & Fire Services i.e. management No.1. AW1 in her cross-examination admitted as correct that she applied maternity leave to management No.1 and after availing maternity leave, on 01.11.2017 she approached the management No.1 for joining duty. The aforesaid version of the workman supports the plea of management No.2 that the workman is employee of the contractor i.e. management No.1 and not the employee of CITCO i.e. management No. 2.

17. Accordingly, this issue is decided in favour of management No. 2 and against the workman.

Issue No. 1 :

18. Onus to prove this issue is on the workman.

19. Under this issue Learned Representative for workman referred the testimony of AW1 Komal, who vide her affidavit Exhibit 'AW1/A' deposed that the averments of claim statement in toto, which are not reproduced here for the sake of brevity.

20. For corroboration the workman examined AW2 Sukhjeet Singh - Clerk, O/o of ALC, Chandigarh, who brought into evidence documents Exhibit 'W1' to Exhibit 'W3'.

21. In order to rebut the evidence of the workman, Learned Representative for management No.2 referred testimony of MW1 Sandeep Sethi - Manager (Commercial), Head Office CITCO, who vide his affidavit Exhibit 'MW1/A' deposed that all the material contents of the written statement filed by management No.2 and supported his oral version with documents Exhibit 'M1' and Exhibit 'M2'.

22. From the oral as well as documentary evidence, led by the contesting parties it is made out that the workman was working with CITCO since year 2006 through the contractor and lastly through the contractor M/s Oscar Security & Fire Service i.e. management No.1. From Exhibit 'M2', it is duly proved on record that on 13.10.2014 a contract between CITCO / management No.2 and M/s Oscar Security & Fire Service / management No.1 for the year 2014-15 was executed, which was extendable for three years. The said contract came to an end in the year 2017. In this regard MW1 in his cross-examination admitted as correct that he has placed on record the contract of CITCO with the contractor of the year 2014-15, which was valid for three years. MW1 admitted as correct that the contract of CITCO with Oscar Security was terminated in the year 2017 as the official of Oscar Security had committed embezzlement of ₹ 35 Lacs.

23. As far as termination of the services of the workman is concerned, the workman has pleaded that she was on maternity leave from May to 29.10.2017. After availing the maternity leave she approached the management for joining the duty but the management totally refused to join the workman. The workman in the claim statement and in her affidavit Exhibit 'AW1/A' did not specifically plead the actual date when she delivered a child. Moreover, the workman has not placed on record any document showing her pregnancy or showing that she has delivered a child. However, the fact that the workman was pregnant and was on leave for six months from May to 29.10.2017 is not specifically denied by management No.1 & 2 in their respective

written statements and this fact has been denied for want of knowledge. Under the law, a fact which is not specifically denied is deemed to be admitted. The workman in the claim statement as well as in her affidavit Exhibit 'AW1/A' did not specifically mentioned whether she applied maternity leave to CITCO / management No.1 or contractor / management No.2 and she has also not specifically mentioned whether after availing the maternity leave she approached to CITCO / management No.1 or contractor / management No.2 for re-joining her duty. However, when put to cross-examination by management No.2, AW1 / workman admitted as correct that she applied maternity leave to management No.1. AW1 further stated that after availing maternity leave, on 01.11.2017 she approached the management No.1 for joining duty. The aforesaid version of AW1 would prove that it is the management No.1, who refused to join the workman when the workman approached the management No.1 on 01.11.2017 for rejoining. Under these circumstances, there was no occasion for the management No.2 to allow or disallow the workman from rejoining duty on 01.11.2017. Moreover, management No.1 in its written statement pleaded that it came to know about the maternity leave of the workman when the workman visited the office of management No.1 after availing her maternity leave in November 2017. The aforesaid plea of the management No.1 supports the version of the workman that she visited the management No.1 on 01.11.2017 after availing he maternity leave for re-joining her duty. Thus, it is the contractor / management No.1, who has terminated the services of the workman by verbal refusal to re-join duty. As discussed above, the contract between the contractor / management No.1 and CITCO / management No.2 has already came to an end. The contractor while terminating the services of the workman neither issued her any show cause notice nor afforded any opportunity of hearing, which is violation of doctrine of natural justice. The plea taken by management No.1 in its written statement that the department did not intimate the contractor regarding maternity leave of the workman and termination of her service does not stand proved as the management No.1 did not lead any evidence either oral or documentary to prove the plea taken in the written statement. Non-appearance of management No.1 in the witness box raises strong presumption against the mangement No. 1. From the discussion made above, it is duly proved on record that management No.1 has illegally terminated the services of the workman. Therefore, management No.1 is held liable to pay lump sum compensation of ₹70,000/- to the workman. No liability of management No.2 is made out.

24. Accordingly, this issue is decided in favour of the workman and against the management No.1.

Relief :

25. In view of the discussion on issues above, the industrial dispute is partly allowed qua management No.1 to the effect that management No.1 is held liable to pay lump sum compensation of ₹70,000/- to the workman within three months from the date of publication of the award, failing which the awarded amount shall carry interest @ 8% per annum from the due date till actual realisation. The industrial dispute qua management No. 2 is declined. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

Dated : 25.04.2023.

(JAGDEEP KAUR VIRK) ,
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 10th July, 2023

No. 13/1/9987-HII(2)-2023/9645.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 99/2021 dated 26.04.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

MOHAN LAL YADAV S/O SH. JAIRAM YADAV R/O #116, SECTOR 8-A, CHANDIGARH
(Workman)

AND

M/S KDDL LIMITED, KAMLA CENTRE, SCO NO.88-89, SECTOR 8-C, CHANDIGARH
THROUGH ITS MANAGING DIRECTOR & MANAGER (Management)

AWARD

1. Mohan Lal Yadav, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman was appointed by the management of M/s KDDL Limited through its Managing Director and Manager w.e.f. 09.04.2014 as Security Guard with various benefits and commitments at wages of ₹ 8,500/- per month vide offer letter dated 09.12.2014. The last drawn wages of workman are ₹ 13,900/- per month. Since year 2014 the workman had continuously done work upto 25.06.2020 and had performed his duties to the best of his ability. There was no single complaint towards his job and conduct. The management was entirely satisfied with the work and conduct of the workman. The workman was working under the direct control and supervision of the management of M/s KDDL Limited. On 25.06.2020 the workman was willing to report for duty but the management verbally terminated the services of the workman without giving any prior notice. When the workman approached senior of management, management without giving proper reason of termination, terminated the services of the workman. This behaviour of the management shows their *malafide* intention in terminating the workman, which is bad in law and amounts to violation of principles of natural justice. The workman is totally unemployed after his arbitrary termination by the management. The management neither issued any memo, charge sheet nor conducted any inquiry in any matter before termination of the workman. The workman several times requested the concerned officer of the management to take him back on duty verbally or in writing but the management did not hear his genuine request. The workman served a legal notice dated 06.07.2020 through registered post to the management, to take the workman back on duty within 10 days. Despite legal notice, the management sent termination letter dated 23.07.2020 to the workman along with one month notice pay of ₹13,900/- and service compensation of ₹27,800/- vide cheque No. 239447 dated 23.07.2020. The job of the workman exists as it is till date. The junior to the workman are still retained in service by the management which is violation of Section 25-F, 25-G and 25-H of the ID Act and other provisions of the ID Act. The action of the management is based on the policy of 'hire & fire' and is colourable exercise of power. The termination of service of the workman has badly disturbed the workman and his family members as he has no other source of income. After illegal termination the workman is totally unemployed and has been facing starvation and all other difficulties faced by an unemployed person. The management has never been

provided or allowed leave with wages to the workman according to the Punjab Industrial Establishment National & Festival Holidays and Casual & Sick Leave Act, 1965, which is violation of the minimum wages act on part of the management. The management intentionally has not issued attendance card to the workman. The management never takes the signature of the workman in the attendance register. The management knowingly did not comply with the provisions of the concerned law during service of workman and badly infringed mandatory provisions of the law. The workman requested the management to preserve the record of service of the workman. The verbal termination of the workman is illegal, unjustified, *malafide* and violative to all the other provisions of the ID Act. So the workman is entitled for reinstatement with full back wages and continuity of service. Prayer is made that the termination order may be declared illegal and the workman may be reinstated into service with continuity of service along with full back wages and other consequential benefits.

3. On notice, management contested the claim statement by filing written statement dated 08.11.2021 wherein preliminary objections are raised on the ground that the workman has concealed the material facts from this Court. The averments of the claim statement are wrong, frivolous and misconceived. The workman often abandoned his post without any prior notice during the work days. Moreover, before the pandemic the workman agreed to be posted at the CMD residence during the lock down period. The workman went home to get his basic amenities and clothes and he did not come back. When he was asked to report for duty, he denied to come to CMD residence and abandoned his post thereafter. After the pandemic the company asked him to rejoin his duties during the month of July 2020 at Kamla Centre, SCO 88-89, Sector 8-C, Chandigarh. He came once and after some time he left the company without any intimation to the company. The company asked many times to rejoin the duty but he did not do so. After that the company had no choice but to terminate him. The workman then filed a notice under Section 2-A of the ID Act with the Assistant Labour Commissioner-cum-Conciliation officer, U.T. Chandigarh under false pretends and after twisting the facts. The company fully cooperated with the proceedings and even filed a written reply. The company was ready to clear the rest of the workman's dues and communicated the same with him and the Hon'ble Conciliation Officer. However, the workman did not cooperate with the company or the officers during the proceedings and was adamant about fulfilling his unfair demands.

4. Further on merits, it is stated that the workman was appointed as a Security Guard on 10.12.2014 and not on 09.04.2012. It is untrue that the workman had continuously worked till 25.06.2020 to the best of his ability. In reality the workman had a habit of regularly taking leaves without notice and disappearing from the job during working hours without any notice. One such instance took place on 20.07.2020 when the workman told his superiors that he was going for a lunch break and did not return for the day again and did not attempt to give any sort of notice for his absence. The next day he refused to meet with his superior to explain the situation and rather rudely rejected their instructions to explain himself. In addition to that, during COVID-19 before lock down period with the consent of Security Guard, the company decided that he would be staying at the CMD residence during the lock down period. The company agreed to provide him with residence, food and other necessary facilities etc. in return for his permanent stay at the venue. He went home to get his basic amenities and clothes but he did not come back. He was asked to report for duty, he denied coming to CMD residence and abandoned his post thereafter. The company asked him to rejoin his duties during the month of July 2020 at Kamla Centre, SCO 88-89, Sector 8-C, Chandigarh. He came once and after some time he left the company without any intimation to the company. The company asked many times to rejoin the duty but he did not do so. The workman was given one month's notice and he was officially terminated vide termination letter dated 23.07.2021. Since the workman completely abandoned his job for several months and refused to work regularly even after returning, thus company had no choice but to terminate him. The company was well within its right to legally terminate him due to his actions. In fact, the company took a lenient approach and terminated him under Clause I(2) of the appointment letter which states that the employee can be terminated by giving him one month's notice and after giving him gross salary for the period of that one month. The company followed its own policies while terminating the workman. These policies are legal and had been agreed to by the workman at the time of his appointment. The company never received the workman's legal

notice and in any case such notice holds no valid grounds and thus requires no reply. The company paid the workman ₹ 41,700/- vide cheque No. 239447 dated 23.07.2020 drawn on State Bank of India in favour of Mohan Lal Yadav, which included one month's salary in lieu of notice and two months compensation. After that the company asked the workman to collect the cheque from them for the rest of his settlement but he refused to do so. During the proceedings before the ALC-cum-Conciliation Officer the company again offered to pay him the rest of his dues and stated so on record. But the workman adamantly refused that settlement. The management had not violated provisions of any law. The management is a reputable company and conducts all its business and internal dealings with fairness and equity. The management cannot be blamed for any misfortune that befell on the workman as all that happened to him are the consequence of his own ignorant and negligent actions. The company had no choice but to terminate him as he was compromising the security and the efficiency of the company through his prolong absence and the company was well within its right to terminate him due to his negligent and irresponsible conduct. The management is in complete adherence of the given law. All the leaves given to the workman were in accordance with the law and proper record were maintained. It is denied that the workman was made to work on Sundays as the offices were not opened on Sunday. It is also untrue that no over time was paid to him. The company uses biometric attendance system. All the records of the attendance of the workers and employees are maintained legally and thoroughly. The attendance records are true and transparent and have not been tempered with by the management in any manner. The management was in accordance with all the labour laws and did not adduce its power in any way, shape or form. The company has shown the relevant records to the Conciliation Officer. The management conducted all its dealings with the workman fairly, justly and legally. The company never concealed any facts from the relevant authorities. The present dispute is baseless and the workman holds no cause of action against the management. The termination order was written and not verbal. The workman is not entitled to any of the benefits claimed by him. Rest of the contents of the claim statement are denied as wrong and prayer is made that the claim statement may be dismissed with cost.

5. Replication not filed. From the pleadings of the parties, following issues were framed vide order dated 12.04.2022 :—

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Relief.

6. In evidence, the workman Mohan Lal Yadav examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. On 16.02.2023 workman closed his evidence in affirmative.

7. On the other hand, management examined Rajnish Kumar Sharma - Consultant to the Senior Manager HR, M/s KDDL Limited, who tendered his affidavit Exhibit 'MW1/A' and MW2 Rajendri Ravi Sharma - Senior Manager, Human Resources, M/s KDDL Limited, who tendered her affidavit Exhibit 'MW2/A'. On 18.04.2023 Learned Representative for the management closed the evidence.

8. It is pertinent to mention here that during cross-examination of MWs the workman has brought into evidence documents Exhibit 'W1' to Exhibit 'W4'.

Exhibit 'W1' is copy of legal notice dated 06.07.2020 got issued by the workman from Shri Amar Singh Chahal - Advocate to M/s KDDL Limited.

Exhibit 'W2' is copy of demand notice dated 24.12.2020.

Exhibit 'W3' is copy of reply dated 25.01.2021 filed by management / KDDL Limited to ALC-cum-Conciliation Officer, U.T. Chandigarh in connection with demand notice under Section 2-A of the ID Act.

Exhibit 'W4' is copy of counterfoil showing deposit of amount of ₹ 41,700/- with Bank of India on dated 23.07.2020 in bank account No.620010310001994 of Mohan Lal Yadav.

9. During cross-examination of AW1 management has brought into evidence documents Exhibit 'M1', Exhibit 'M2' and Mark 'X'.

Exhibit 'M1' is copy of appointment letter dated 22.12.2014 wherein it is mentioned that the appointment is effective from 10.12.2014.

Exhibit 'M2' is copy of Annexure - II i.e. the terms & conditions of employment which is part of appointment letter.

Mark 'X' is the copy of letter dated 14.12.2018 issued from Mohan Lal Yadav / workman to the Chief Financial Officer, KDDL Limited seeking to encashment his 10 days earned leave.

10. I have heard arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :—

Issue No. 1 :

11. Onus to prove this issue is on the workman.

12. Under this issue the workman Mohan Lal Yadav examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity. To support his oral version Learned Representative for the workman referred documents Exhibit 'W1' to Exhibit 'W4'.

13. In order to rebut the evidence of the workman, management examined MW1 Rajnish Kumar Sharma, who vide his affidavit Exhibit 'MW1/A' deposed that Mohan Lal Yadav was appointed as a Security Guard on 10.12.2014 by the management. He was appointed on the above mentioned post in accordance with the prevailing law of the country and as per the terms & conditions of the appointment letter, which were duly communicated to the worker at the time of his appointment. During COVID-19 lock down period, the management asked the worker whether he would like to work as a Security Guard as CMD's residence, who was working from home since the offices were going to be closed during the period of lock down. The worker initially agreed to do so. The management agreed to provide him with residence, food and other necessary facilities etc. in return for his permanent stay at the venue. However, the workman told them anagement that he was going home to get his basic amenities, clothes etc. but he did not come back and when he was asked to report for duty, he denied coming to CMD residence and he abandoned the post thereafter. After the pandemic was lifted and the offices of the company were allowed to re-open, the management asked the workman to report back to the office of the company situated at SCO NO.88-89, Sector 8-C, Chandigarh and rejoin his post as Security Guard. However, after re-joined, he was unapologetic regarding previous behaviour and was continuously absent without giving prior notice to the management. On 20.07.2020 the worker told him that he is going out for lunch and will back in an hour. However, he did not return to work that day. He called the worker on 22.07.2020 to meet him the next day and explain the reasons for his absence. The workman refused to met him and told him that he will not be coming back to work again. Having no other choice, the management had to terminate the worker in accordance with Clause I(2) of the terms & conditions of the appointment letter.

14. For corroboration the management examined MW2 Rajendri Ravi Sharma, who deposed that Mohan Lal Yadav was appointed as a Security Guard on 10.12.2014 as per the terms & conditions of the appointment letter. During the lock down period the worker agreed to be appointed at the CMD residence and went home to get basic necessities. He did not return and ignored any attempts at communication.

On 23.07.2020 she was informed via e-mail by Mr. Rajinsh Kumar Sharma that on 20.07.2020 the worker went on his lunch break and then never came back. When Mr. Rajnish called the worker and asked the worker to meet with him the next day, the worker refused to do so and told Mr. Rajnish that he will not return to work again. The management had no choice but to terminate his services under Clause I(2) of the appointment letter. The management paid ₹ 41,700/- to the worker in lieu of the full & final settlement vide cheque. The worker was asked to collect the rest of his settlement but he refused to do so. The worker filed a claim before the ALC-cum-Conciliation Officer in order to harass the company. During the proceedings before ALC-cum-Conciliation Officer the company again offered to pay the worker the rest of his settlement but he refused to accept it.

15. To support the oral version of MWs Learned Representative for the management referred documents Exhibit 'M1', Exhibit 'M2' and Mark 'X'.

16. From the oral as well as documentary evidence led by the parties, it comes out that admittedly the workman was appointed as Security Guard in sub-staff at KDDL Limited w.e.f. 10.12.2014 vide appointment letter dated 22.12.2014. The appointment letter dated 22.12.2014 / Exhibit 'M1' is accompanied with Annexure 'I' showing total monthly salary ₹ 8,500/- and Annexure 'II' incorporating the terms & conditions of the employment. The plea taken by the management that the workman has accepted the terms & conditions of the appointment letter Exhibit 'M1' stands proved from the cross-examination of AW1, wherein he has stated that he has seen copy of appointment letter dated 22.12.2014 (date is incorrectly mentioned as 22.04.2014 due to clerical mistake) / Exhibit 'M1' along with terms & conditions of employment / Exhibit 'M2' which bears his signatures at point 'A' and point 'B' respectively.

17. In the claim statement the workman has alleged that he worked continuously from 09.04.2014 to 25.06.2019. The management has proved into evidence the appointment letter vide Exhibit 'M1' which reveals that the workman was appointed w.e.f. 10.12.2014 in pursuance of offer letter dated 09.12.2014. The management has alleged that the services of the workman were terminated vide termination letter dated 23.07.2020 with immediate effect. AW1 in his cross-examination stated that it is correct that on 23.07.2020 he was called to the office of the management through some employee, but he telephonically informed that he is not willing to come the office. AW1 voluntarily stated that on 23.07.2020 he came to the office of the management in SCO 88-89, Sector 8-C, Chandigarh, he was told to sit at the basement and no one will talk to him and thereafter he requested them to mark his attendance to which the management refused. The aforesaid version of the workman led to the inference that dated 23.07.2020 was the last working day of the workman as the termination order was passed by the management on 23.07.2020 with immediate effect.

18. Now the controversy is confined to the fact that whether the termination of the workman in terms of condition No.I(2) of the terms & conditions of the service Exhibit 'M2' which is part of appointment letter is legal or not. Learned Representative for the management argued that the workman in his cross-examination has admitted his signatures at point 'A' & 'B' of the appointment letter. Signatures at point 'A' of the workman are appended on the appointment letter and signatures at point 'B' of the workman are appended on Annexure 'II' of the appointment letter. The admission of signature by the workman on the appointment letter and terms & conditions of the appointment letter would suggest that the workman has agreed with the terms & conditions of his employment at the time of joining service. Moreover, the management has complied with all the requirements of termination as per condition I(2) of the terms & conditions i.e. the management at the time of issuing termination letter had paid amount of ₹ 41,700/- which includes ₹ 13,900/- towards one month pay in lieu of notice period and ₹ 27,800/- towards service compensation, by way of cheque No. 239447 dated 20.07.2020 and the said amount has been deposited in salary account of the workman bearing account No.620010310001994 maintained with Bank of India. To prove the transfer of the said amount to the bank account of the workman Learned Representative for the management referred counterfoil of bank deposit pay in slip i.e. 'W4'. Much stress is laid upon the fact by Learned Representative for the management that the management has not violated any of the terms & conditions of the appointment letter. On

the other hand, Learned Representative for the workman argued that termination order is illegal as it does not fulfill the requirement of Section 25-F of the ID Act. The amount of ₹ 41,700/- has been forcibly deposited in the salary account of the workman without his consent. In this regard workman / AW1 in his cross-examination stated that it is correct that the matrialent had paid him ₹ 41,700/-through cheque dated 23.07.2020 which was deposited in his account. Volunteered, the said payment was deposited in his account without informing him. The aforesaid plea taken by the workman stands proved because the management has not proved into evidence any document showing intimation of termination order or intimation of payment of ₹ 41,700/- to the workman.

19. The workman worked with the management from the date of his appointment i.e. 10.12.2014 till the date of his termination i.e. 23.07.2020. The management has not proved into evidence the attendance record to show the period of his alleged absence. There is no record showing any break in service during the period 10.12.2014 to 23.07.2020. It is duly proved on record that the workman has worked for 240 days in 12 calendar months preceding his termination. Thus, the workman has met with the requirement of Section 25-B of the ID Act. Consequently, the provision of Section 25-F of the ID Act stands attracted. It would be apposite to reproduce Section 25-F of the ID Act :—

"25F. Conditions precedent to retrenchment of workmen.-No workman employed in any industry who has been in continuous service for not less than one year under an employer until-

- (a) *the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
- (b) *the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and*
- (c) *notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."*

By virtue of Section 25-F(a) one month notice must indicate the reasons for retrenchment. In the present case, as per order of termination dated 23.07.2020 the amount towards one month's pay in lieu of one month's notice and the amount towards service compensation is paid through bank transaction but reason for termination is not mentioned. The relevant portion of order of termination dated 23.07.2020 is reproduced as below :—

"We regret to inform you that your services are no longer required and, as such, you are hereby terminated in accordance with clause I(2) of your appointment letter dated 22.12.2014 and accordingly, you stand relieved with immediate effect."

Clause I(2) of the Annexure 'II' / Exhibit 'M2' i.e. terms & conditions of employment forming part of appointment letter Exhibit 'M1' is reproduce as below :—

"I(2) After confirmation this appointment can be terminated by giving one months' notice in writing from either side or in case of the Company, by paying you an amount equivalent to one months' gross salary in lieu of notice."

The workman was terminated without any charge sheet or any inquiry. Thus, Clause I(2) of terms & conditions of employment forming part of appointment letter is contrary to the provision of Section 25-F of the ID Act because the reason of termination is not mentioned therein. Clause I(2) seems to have been incorporated by the management in the terms & condition of the employment forming part of appointment letter / Exhibit

'M1' to avoid the liability arising under Section 25-F of the ID Act. Provision of Section 25-F of the ID Act shall prevail over Clause I(2) of the terms & conditions of employment. As per the judgment of Hon'ble Supreme Court of India referred by Learned Representative for the workman reported in **1988(4) SLR 388 titled as Narotam Chopra Versus Presiding Officer, Labour Courts & Another**, if the services of an employee are terminated in violation of Section 25-F of the ID Act, 1947, the order of termination is rendered ab-initio void and the employee would be entitled to reinstatement with continuity of service along with full back wages and other allowances. In the judgment of Hon'ble High Court of Punjab & Haryana referred by Learned Representative for the workman reported in **2008(6) SLR 360 (DB) titled as M/s New MidhBhabra Transport Company (P) Ltd. Versus Presiding Officer, Labour Court, Gurdaspur & Another**, in para 4 it is held as below :—

"4. After hearing counsel for the parties, we are of the opinion that the services of respondent No.2-workman on 2.9.1998 were terminated without any charge sheet or any inquiry. In view of the said fact, the Award of the Labour Court dated 6.6.2006 does not suffer from any patent illegality and material irregularity when the Labour Court ordered reinstatement of respondent No.2-workman with continuity of service and also to grant 50% of the back wages."

The aforesaid judgments are applicable to the facts of the present case to an extent. Consequently, termination of service in violation of Section 25-F of the ID Act amounts to unfair labour practice.

20. Learned Representative for the management argued that the workman has already joined another company and is currently employed. To my opinion, the aforesaid argument is devoid of merits because AW1 in his cross-examination has denied the suggestion as wrong that after termination he is employed with some other organisation. The suggestion denied by witness is no evidence unless proved otherwise. In the present case, the management did not bring on record the name or any particulars of the organisation where the workman is allegedly employed after termination of his job.

21. In view of the reasons recorded above, termination order dated 23.07.2020 is hereby set aside and the workman is ordered to be reinstated into service with continuity of service and 50% back wages and other consequential benefits.

22. Accordingly, this issue is decided in favour of the workman and against the management.

Relief :

23. In the view of foregoing finding on the issue above, the present industrial dispute is allowed and termination order dated 23.07.2020 is set aside and the workman is held entitled to reinstatement into service with continuity of service and 50% back wages and other consequential benefits. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

Dated : 26.04.2023.

(JAGDEEP KAUR VIRK) ,
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 10th July, 2023

No. 13/1/9981-HII(2)-2023/9647.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 116/2021 dated 25.05.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

RAM BAHADUR S/O SH. RAM PARSHAD, R/O HOUSE NO.1737, MAULI JAGRAM COMPLEX, UNION TERRITORY, CHANDIGARH (Workman)

AND

THE PROPRIETOR/PARTNER/MANAGER, M/S RAJ TRADERS, S.C.F. NO.212, NEAR LOCAL BUS STAND, MANIMAJRA, UNION TERRITORY CHANDIGARH (Management)

AWARD

1. Ram Bahadur, workman has presented industrial dispute under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman joined the services of the employer-management w.e.f. 09.10.2014 and worked continuously without any break or interruption in the services till 16.07.2021 when his services were terminated / retrenched with verbal orders. The workman was working as Chowkidar / Security Guard. At the time of his retrenchment / termination he was drawing wages @ ₹18,000/- per month. The workman was performing his duties from 8:00 A.M. to 10:00 P.M. and some times up to 10:30 without any weekly rest. The workman performed his duties up to the entire satisfaction of the management and his superiors. The workman was never issued any show cause notice, warning, charge sheet or any other memo to question his work & conduct throughout his services period of more than 6 years and nine months. At the time of his appointment, the management did not issue appointment letter to the workman. The workman was not issued any designation letter or identity card during his entire service period. When the workman joined the services, there were more than 26 workers who were working in M/s Raju Traders, SCF No.212, Near Local Bus Stand, Manimajra, U.T. Chandigarh. The workers are not covered under the welfare schemes like ESIC and provident fund. The management did not make payments during the lock down period in the year 2020 and 2021. After the lock down the management started paying just ₹5,000/- per month for more than 14 hours duties daily. The workman was pressing for proper payments. On 28.06.2021 the workman went to his native village in District Gonda, Uttar Pradesh (U.P.) due to some urgent work and returned on 15.07.2021. The workman reported for duty on 16.07.2021. The management refused duty and told that they have appointed another Security Guard in his place. The workman requested the management to allow him duty or clear his legal dues but the management refused and told the workman that they have nothing to pay. The management also threatened to run away from there if he wants his safety. At present there are 26 workers employed by the management who are working as Salesmen, Mechanics, Repair Staff, Security Staff, Sweepers and Helpers etc. It was difficult for the workers to run their households without their wages, they were raising the issue with the management for increase in their wages as per the wages fixed by the Labour Department of Chandigarh Administration. This demand was not acceptable to the management and it started targeting the workers by one way or the others. The workman was also showing his

resentment against non-implementation of even minimum rates of wages, he was warned against raising his voice. The workman requested for duty verbally with folded hands but his requests and prayers were ignored by the management and his services were retrenched / terminated with verbal orders. The retrenchment / termination of the workman is illegal, unjustified, against the principles of natural justice and highly arbitrary on the following grounds :—

- i) The workman performed his continuous service for 6 years 9 months and 7 days. At the time of his verbal termination, he was neither served notice of termination / retrenchment nor paid notice pay and compensation for the retrenchment. As such, the retrenchment is in violation to Section 25-F of the ID Act.
- ii) At the time of retrenchment of workman, his juniors were retained in services, whereas his services were retrenched in violation of Section 25-G of the ID Act.
- iii) The termination / retrenchment of the workman is not termination simplicitor but the termination is by way of punishment as he was demanding payment of wages as per law.

The workman raised demand notice. The conciliation proceedings before Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh failed. Prayer is made that the verbal order dated 16.03.2021 of management whereby the services of the workman were retrenched / terminated may be set aside being illegal and the workman may be reinstated into service with continuity of service along with full back wages and other consequential benefits.

3. On notice, management contested the claim statement by filing written reply / written statement on dated 24.08.2022 wherein preliminary submissions are made on the ground that the employer is a reputed trader by the name and style of 'Raju Traders' for the past more than decade and has name and reputation in the market. The statement of claim is totally based on concocted stories with no base. The intention of the workman is just to levy fake and plotted allegations on the management. The services of the workman are never terminated / retrenched on the part of the management. It was the workman who left the services without giving any notice or intimation to the management about his decision of leaving the job. Being an employee there was a relationship of trust established between workman and employer. The management had always taken care of the workman and his basic needs and had always paid the wages on time. The workman always used to borrow cash / money from the management by saying that he has to send the same to his family in the village. The workman used to return the same on timely basis or some times late. The workman have taken ₹ 1,60,000/- from the management by saying that he has to buy a piece of land in his home village and he will return the same on timely basis and with small deduction from his salary. The management had given him the same in cash so that he can purchase the land and serve his family property. When the management started demanding the amount which he had given to the workman in the name of purchasing of land, he started ignoring him on one pretext or other. The workman assured the management that he will pay his due amount in the month of June 2021 and for the same workman left for his village by taking leave from the management for two days. The workman assured that he will pay the entire amount once he will return from his village but after that day he never turned up. The management tried to contact the workman at his number but the management could not reach the workman as his number was not reachable / accessible. The workman had left the job without any previous notice or intimation to the management. The workman is liable to pay the management an amount equivalent to his one month's salary in lieu of notice period.

4. Further on merits, the facts regarding raising of demand notice, conciliation proceedings before the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh and the failure of the conciliation proceedings are replied being matter of record. It is admitted to the extent that the workman was drawing the wages of ₹18,000/- per month. It is denied that the workman was performing his duties from 8:00 A.M. to 10:00 P.M. It is stated that the mobile shops never use to open at 8:00 A.M. in the morning. The workman with

his consent was getting one monthly off with wages. It is incorrect that services of the workman were unblemished and full satisfied. Maximum times the workman used to take unplanned offs and also used to come late. There was an implied contract executed between the workman and the management to perform the duties of Security Guard for which he was being paid by the management. As per instructions of the Government during the pandemic COVID-19 situation, entire India was completely shut down and in this difficult time it was not feasible for an employer, who is running a small business / mobile shop to pay his employee for no-work. In this tough situation the employer had not lay off. The management is running a mobile shop and when the workman had not come then the management appointed another Security Guard in his place. The workman was drawing ₹ 18,000/- per month which is at par for the wages of Security Guard. There is no violation of Section 25-F of the ID Act. There is only one post of Security Guard, therefore, there is no violation of Section 25-G of the ID Act. Rest the averments of claim statement are denied as wrong and prayer is made that the claim statement may be dismissed with cost.

5. The workman filed rejoinder, wherein the contents of the written reply / written statement except admitted facts of the claim statement are denied as wrong and averments of claim statement are reiterated.

6. From the pleadings of the parties, following issues were framed vide order dated 31.10.2022 :—

1. Whether the termination of the services of the workman is illegal ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled to reinstatement with continuity of service, with full back wages and other consequential benefits, as prayed for ? OPW
3. Relief.

7. In evidence, the workman Ram Bahadur examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with copies of documents Exhibit 'AW1' to 'AW5' and Mark 'A' & Mark 'B'.

Exhibit 'AW1' is demand notice dated 19.07.2021.

Exhibit 'AW2' is original postal receipt dated 19.07.2021 regarding issuance of demand notice dated 19.07.2021 under Registered Cover to management i.e. M/s Raju Traders.

Exhibit 'AW3' is original failure report bearing Memo No.2377 dated 26.10.2021 of Assistant Labour Commissioner-cum-Conciliation Officer, U.T, Chandigarh.

Exhibit 'AW4' is self attested copy of my aadhar card No. 278380132530.

Exhibit 'AW5' is acknowledgment/slip issued by Chandigarh Police complaint tracking system.

Mark 'A' is complaint dated 20.08.2021 to the S.H.O, Police Station Manimajra, U.T, Chandigarh.

Mark 'B' is attendance register for the month of 01.05.2017 incorporating my name as Bahar instead of my correct name Ram Bahadur at Sr. No. 16.

On 13.03.2023 the workman closed his evidence in affirmative.

8. On the other hand management examined MW1 Devender Kumar - Proprietor M/s Raju Traders, who tendered his affidavit Exhibit 'MW1/A'. On 17.05.2023 Learned Representative for the management closed evidence.

9. I have heard arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :—

Issue No. 1 :

10. Onus to prove this issue is on the workman.

11. Under this issue, the workman Ram Bahadur examined himself as his own witness and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity. AW1 supported his oral version with documents Exhibit 'AW1' to Exhibit 'AW5' and Mark 'A' and Mark 'B'.

12. On the other hand, Learned Representative for the management referred the testimony of MW1 Devender Kumar - Proprietor, M/s Raju Traders, who vide his affidavit Exhibit 'MW1/A' deposed that employer is reputed trader by the name and style of 'Raju Traders' for the past more than decade and has name and reputation in the market. The services of the employee were never terminated / retrenched by the employer / deponent. It was the workman who left the services without giving any notice or intimation to him regarding leave the job. The workman orally taken 2 days leaves and after that day he never turned up. The workman had left the job without any previous notice or intimation to him, hence the workman is liable to pay an amount equivalent to his one month salary in lieu of notice period to him. The workman was drawing the wages of ₹18,000/- per month. The averment of the workman that he was performing his duties from 8:00 A.M. to 10:00 P.M. is quite wrong, false, incorrect, hence denied. It is a much known fact that mobile shops never use to open at 8:00 A.M. in the morning. As per the instructions of the Government during the pandemic COVID-19 situation entire India was completely shut-down and in this difficult time it was not feasible for an employer, who is running a small business / mobile shop to pay his employee for no-work. In this tough situation the employer had not lay off. The management is running a mobile shop and when the workman had not come then he appointed another Security Guard in his place. The workman filed a wrong and frivolous complaint to the SHO, Manimajra against him just to harass him and the said complaint was closed by the investigating agency after a preliminary inquiry which shows that all the allegations levelled by the workman are false and based on concocted story. The services of the workman were never terminated on his part. Therefore, there is no violation of Section 25-F of the ID Act. There is only one post of Security Guard, therefore, there is no violation of Section 25-G of the ID Act. In the above facts & circumstances, the workman is not entitled for the claim. Therefore, this claim petition deserves to be dismissed.

13. From the oral as well as documentary evidence led by the parties, it is proved on record that M/s Raju Traders is running its business since year 2000 and Devender Kumar is Proprietor of M/s Raju Traders. The workman has alleged that he joined as a Security Guard with the management w.e.f. 09.10.2014 and worked till 30.06.2021. On the other hand, the management has alleged that the workman was employed since 2017. In this regard, AW1 Ram Bahadur in his cross-examination stated that he has joined with the management as Security Guard on 09.10.2014 and worked till 30.06.2021. MW1 Devender Kumar in his cross-examination denied the suggestion as wrong that the workman is employed with the management since 09.10.2014 and voluntarily stated that he is employed since 2017. To my opinion, the version of the workman that he is employed with the management w.e.f. 09.10.2014 cannot be disbelieved and the version of the management that the workman is employed since year 2017 cannot be trusted because the management has not issued any appointment letter to the workman. In this regard, MW1 in his cross-examination stated that the management of M/s Raju Traders do not issue any appointment letter to its workers.

14. The workman has alleged that he was getting ₹18,000/- monthly wages. In para 4 on merits of written reply to claim statement and MW1 in para 4 of his affidavit Exhibit 'MW1/A' admitted the fact to the extent that the workman was drawing the wages of ₹18,000/- per month. MW1 in his cross-examination voluntarily stated that the monthly salary of the workman was ₹15,000/- and ₹ 3,000/- was towards his diet

money per month. The aforesaid volunteer statement of MW1 is not believable because this fact has been introduced for the first time by MW1 in his cross-examination. No such division of monthly salary is mentioned in written reply to claim statement. Thus, the division of monthly salary in two parts i.e. ₹15,000/-towards wages and ₹3,000/- towards diet money is not only beyond pleadings but also does not stand corroborated from any document. The management has not proved into evidence any pay slip or record of wages. The oral version of the management without any record of pay slip of wages that it is paying salary regular to its workers cannot be relied upon. The service record of a workman which includes record of his salary and leave remains in the control of the management and it is for the management to prove the same. In the present case no such service record of the workman is proved into evidence by the management.

15. Now coming to the termination, the workman has alleged that on 28.06.2021 he went to his native place in District Gonda, U.P. due to some urgent work on sanctioned leave and returned on 15.07.2021. On the other hand, management has denied the fact that the workman proceeded on sanctioned leave. In this regard AW1 in his cross-examination stated that he has not submitted any application for seeking leave. AW1 voluntarily stated that as per practice leave applications were not taken from the workers. From the aforesaid version of AW1 it is proved on record that before proceedings on leave from 28.06.2021 to 15.07.2021 the workman did not apply any leave, therefore, the question of sanction of leave does not arise. The workman has alleged that on 16.07.2021 he reported for duty to the management but he was verbally refused duty and was told that another Security Guard have been appointed at his place. On the other hand, management has alleged that the workman himself left the job without any prior notice or intimation to the management and thus, there is no question of termination of services of the workman by the management. To my opinion, keeping in view the fact that the workman before proceedings on leave did not apply any leave application and did not get the leave sanctioned from the competent authority of the management, then at the most the workman is assumed as absent from duty. Even if the workman was absent from duty, then on his return to duty on 16.07.2021 it was required for the management to issue any show cause notice or memo to him calling his explanation for his absence or if the services of the workman were to be retrenched, the management was bound to follow the provisions of Section 25-F of the ID Act. MW1 in his cross-examination stated that the management had never issued any show cause notice to the workman for his unsatisfactory work. It is not the plea of the management that it had ever issued any show cause notice to the workman for his un-authorized absence. Since the workman had regularly and continuously worked with the management from 09.10.2014 up to 27.10.2021 (dated 28.06.2021 to 15.07.2021 is period of absence from duty), thus the workman has completed 240 days of service in twelve calendar months immediately preceding his termination (verbal termination is of dated 16.07.2021) as required under Section 25-B of the ID Act. Once the workman falls within the purview of Section 25-B of the ID Act, then the conditions precedent to retrenchment of workman as incorporated in Section 25-F of the ID Act stands attracted. For better appreciation Section 25-F of the ID Act is reproduced as under :—

25F. Conditions precedent to retrenchment of workmen - No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette."

In the present case, the management has neither issued one month prior notice nor paid notice pay in lieu of notice period and retrenchment compensation, therefore, the verbal termination of the workman on 16.07.2021 by refusal of work to him is hit by Section 25-F of the ID Act. Consequently, the verbal termination order dated 16.07.2021 is illegal and the same is hereby set aside.

16. No evidence has come on record that any other Security Guard has been employed by the management at the place of the workman. MW1 in his cross-examination has stated that no worker was employed at the place of the workman. The workman has also not named any person, who is allegedly appointed at his place by the management.

17. Accordingly, this issue is proved in favour of the workman and against the management.

Issue No. 2 :

18. Onus to prove this issue is on the workman.

19. This issue is necessary consequence of issue No.1. Since issue No.1 has been proved in favour of the workman, consequently the workman is entitled to reinstatement with continuity of service and 50% back wages.

Relief :

20. In the view of foregoing finding on the issues above, this industrial dispute is allowed to the effect that the workman is entitled to reinstatement with continuity of service and 50% back wages. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

Dated : 25.05.2023.

(JAGDEEP KAUR VIRK) ,
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Secretary Labour,
Chandigarh Administration.

CHANGE OF NAME

I, Ajhar Iqbal, S/o Late Shabbir Alam, # 399, Sector-52, Kajehri, Chandigarh, declare that in my 10th Certificate Roll No 13209119 year 2020 and 12th Certificate Roll No 13606711 year 2022 issued by CBSE my father name was wrongly mentioned as Mohd Shabbir whereas his correct name is Shabbir Alam.

[861-1]

I, Anju, D/o Kishori Lal Chopra, resident of H No. 3296A, Sector 24-D, Chandigarh, have changed my name from Anju to Anjoo.

[862-1]

I, Pawan Kumar, S/o Sudesh Kumar, # 345, VPO Maloya, Chandigarh, have changed my minor daughter name from Anjli to Anjli Verma.

[863-1]

I, Shankar Lal, S/o Sh. Ram Sunder, R/o # 3022, Sector 56-A, Chandigarh, that I have changed my name from Sashi Kant to Shankar Lal.

[864-1]

I, Jagat Narain, S/o Shitla Prasad, R/o 42/2, Small Flats Maloya, Chandigarh, have changed my name Ramu Pathak.

[865-1]

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